Supreme Court, U. S.
FILED
NOV 1 1978
MICHAEL RODAK, JR., CLERK

No. 78-731

In the Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, APPELLANT

v.

UVALDE COUNTY, TEXAS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

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OPINION BELOW

The opinion of the district court (App. A, *infra*) is not reported.

JURISDICTION

The judgment of the three-judge court (App. B, *infra*), denying all relief sought by the United States and the private plaintiffs under Section 5 of the

Voting Rights Act of 1965, as amended, and dismissing the action, was entered on April 27, 1978. A subsequent order of the district court denying the United States' motion for reconsideration was entered on June 28, 1978 (App. C, *infra*).

The United States filed a notice of appeal on August 17, 1978 (App. D, *infra*). On October 11, 1978, Mr. Justice Powell extended the time to docket the appeal until November 15, 1978. The jurisdiction of this Court rests on 42 U.S.C. 1973c and 28 U.S.C. 1253. *Allen* v. *State Board of Elections*, 393 U.S. 544, 560-563 (1969); *Perkins* v. *Matthews*, 400 U.S. 379 (1971).

QUESTION PRESENTED

Whether, under Section 5 of the Voting Rights Act and implementing regulations, the Attorney General's objection to a county redistricting plan was untimely because it was entered more than 60 days after receipt of the county's initial inadequate response to the Attorney General's first request for additional information.

STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. (Supp. V) 1973c, provides, in relevant part:

> * * * whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, prac-

tice, or procedure with respect to voting different from that in force or effect on November 1, 1972, * * * such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the

sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

STATEMENT

Uvalde County, as a political subdivision of the State of Texas, became covered by the relevant provisions of Section 4 of the Voting Rights Act and subject to the "preclearance" requirements of Section 5 of the Voting Rights Act, 42 U.S.C. (Supp. V) 1973c, shortly after the Act was amended in 1975. 40 Fed. Reg. 43746 (1975); see *Briscoe* v. *Bell*, 432 U.S. 404 (1977).[1] On September 23, 1975, Section

[1] Congress expressed particular interest in the voting rights of the Mexican American population of Uvalde County in extending the coverage of the Voting Rights Act in 1975. H.R. Rep. No. 94-196, 94th Cong., 1st Sess. 18 (1975); 121 Cong. Rec. S13665 (daily ed. July 24, 1975); see *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 94th Cong., 1st Sess. 403-405, 485 (1975) (statement of Charles L. Cotrell); *Extension of the Voting Rights Act of 1965: Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 97 (statement of Arthur S.

5 took effect not only for future voting changes in the State and its subdivisions, but also with respect to "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972." This, of course, included any redistricting for voting accomplished since the end of 1972.

The Uvalde County Commissioners Court, in August 1973, reapportioned the four commissioner districts by redrawing district boundaries. The five-member Commissioners Court includes the County Judge who is elected at large and four commissioners who are elected from single member districts. Each commissioner is required to reside in the district he represents.[2]

2. On March 18, 1976, the Assistant Attorney General for the Civil Rights Division[3] informed the Uvalde County Judge by letter (App. E, *infra*, 27a) that the redistricting of the Commissioners Court was subject to Section 5 preclearance. Enclosed with this letter was a copy of the Attorney General's guidelines for Section 5 submissions published at 28 C.F.R.

Flemming), 757 (statement of Vilma S. Martinez), 773-774 (memorandum from Mexican American Legal Defense and Educational Fund), 998-999, 1005-1007 (memorandum from U.S. Commission on Civil Rights) (1975).

[2] Texas Rev. Civ. Stat. Ann. Arts. 2339, 2342 (Vernons' 1971).

[3] The Attorney General has delegated the enforcement of the Voting Rights Act to the Assistant Attorney General for the Civil Rights Division. 28 C.F.R. 0.50(a).

51.1 *et seq.* On March 22, the county responded (*id* at 29a) by submitting to the Assistant Attorney General a brief chronology of the redistricting process, copies of correspondence with several interested individuals, two newspaper clippings, and a tabulation of the number of votes cast in the 1974 primary and general elections. The county's letter stated that a 12-member redistricting committee appointed by the Commissioners Court began to draw up a plan in 1973 after data from the 1970 census became available (*id.* at 31a):

> At this time they used the voter list, the census report, a spot map kept by the City of Uvalde showing the density of utilities users and all other information they could receive.

Following a telephone call from a department research analyst, the county, on May 17, 1976, sent a list of polling places and statistics of registered voters by district as of 1972 under the previous apportionment (*id.* at 36a).

The county's original submission did not include a number of items identified in the guidelines as important for review of the redistricting plans. Within 60 days of receipt of the initial submission, on May 19, 1976, the Assistant Attorney General wrote (*id.* at 39a) requesting additional data and notifying the county that the 60-day period for review "will commence when this Department receives the information necessary to evaluate properly the changes proposed in your submission." Three items were spe-

cifically requested: (1) total population and registered voters by race for each precinct before and after the redistricting, with the provision that estimates should be submitted if exact statistics were not available; (2) a map of the county showing district boundaries before and after the change; and (3) an indication on that map or a separate map of the geographic areas predominantly inhabited by persons of Spanish descent.

On May 28, 1976, the county responded (*id.* at 41a) by providing figures for registered voters by race and district for 1972 and 1976 and maps of the old and new boundaries. Although the Assistant Attorney General's letter had requested an indication of racial concentrations on the maps, the county's response instead vaguely described the residential distribution of "Latin Americans," stating that district 1 had "a considerable number," that the number in district 4 had "increased considerably" and that district 2 was "almost all Latin-Americans" (*id.* at 42a). In response to the request for total population figures, the letter stated (*id.* at 41a):

> We do not have any way of telling the total population of these districts before and after this change was made.

No explanation was given for the county's earlier assertion in its initial submission that it had used census data, utilities maps and other population information (see *id.* at 31a).

On July 30, 1976, within 60 days of the receipt[4] of the county's additional information, the Assistant Attorney General again wrote to the county (*id.* at 44a) and repeated the request for estimates of total population by district and maps indicating the concentrations of persons of Spanish descent. With respect to the population estimates the letter explained (*id.* at 44a-45a):

> In this regard, your correspondence indicates that in the reapportionment voter registration data as well as population data were taken into account. Furthermore, the Redistricting Committee, appointed by the Uvalde County Commissioner's Court, in their report indicates that 1970 census tabulations as well as a population density map for the City of Uvalde was available for their consideration. Please advise us of the specific data utilized in your determination.

The letter went on to request three additional items of information which had not previously been specifically requested: (1) significant population shifts since 1970; (2) the 1972 list of registered voters; and (3) election results since 1970 indicating the race of candidates. The county was again advised that the 60-day review period would not commence until the information was received.

On August 12, 1976, the county sent the map indicating concentration of persons of Spanish descent (which had twice been specifically requested), as well

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[4] The county's letter was received on June 1, 1976 (App. A, *infra*, 7a).

as a transportation study concerning population growth, maps of precinct lines, lists of registered voters for 1972 and 1976, and election results since 1970. The covering letter stated in part that (*id.* at 47a-48a):

> The only way we would have to estimate these populations in Uvalde County as a whole or any Commissioners precinct at any given time would be by the voter registration records. There is no other way that this could be done. * * * I notice you say that the re-districting committee appointed by the Uvalde County Commissioners Court in their report indicated that 1970 census tabulations as well as a population density map for the City of Uvalde was available for their consideration. Then you state "Please advise us of the specific data utilized in your determination." I do not know exactly what you mean by this last sentence. If you mean at the time we re-districted we took this committee's report in full and re-districted according thereto.

Thus, the county never provided the twice-requested population data mentioned in its initial submission as forming part of the basis for the redistricting plan. And only in its final response of August 12, 1976, did the county finally supply the map indicating the concentration of persons of Spanish descent.

3. On October 13, 1976, within 60 days of the receipt[5] of the county's final response, the Attorney

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[5] The county's letter was received by the Department on August 14, 1976 (App. E, *infra*, 47a).

General interposed an objection to the Uvalde reapportionment (*id.* at 52a). The county was informed that it appeared that the district with the largest population was overwhelmingly Mexican American and that the total percentage deviation between that district and the predominantly Anglo smallest district exceeded 20%. Consequently, the Mexican American voters were significantly underrepresented. The objection letter noted that the county had indicated in its submission that the plan was based on statistics for registered voters, and that reliance on such data would likely result in an even greater underrepresentation of Mexican Americans due to their lower rate of voter registration. The odd elongated hourglass shape of predominantly Anglo district 1, adjoining the heavily Mexican American district 2, was also noted.

4. The private plaintiffs filed suit on October 18, 1976, under Section 5 of the Voting Rights Act, 42 U.S.C. (Supp. V) 1973c, seeking a declaration that the primary elections of May and June of 1976 were null and void and an injunction against holding any further elections under the redistricting plan. The Court of Appeals for the Fifth Circuit issued a stay on November 5, 1976, to prevent the opening and canvassing of the results of the election of November 2, 1976, and empanelled a three-judge district court. On December 13, 1976, the United States was granted leave to intervene as a party plaintiff. Trial on the merits was held on April 11, 1978.

The three-judge district court denied injunctive and declaratory relief, dissolved the stay and dismissed the action (App. A, *infra*, 13a). The court ruled that the objection letter of October 13, 1976, was untimely because the county submission was "complete" as of June 1, 1976, when the Department received the county's response to the first request for additional information (*ibid.*). Distinquishing *Georgia* v. *United States*, 411 U.S. 526 (1973), and relying on a reference to "[t]he request" in 28 C.F.R. 51.18(a), the court held that only one request for additional information may postpone the commencement of the 60-day review period (*id.* at 10a).

Judge Spears dissented on the ground that the Attorney General had complied with the regulations upheld in *Georgia* v. *United States*, *supra*, and that the multiple requests were reasonable in view of the confusion created by the county's letters and the importance of the requested information (*id.* at 18a).

THE QUESTION IS SUBSTANTIAL

1. Section 5 of the Voting Rights Act provides that a covered jurisdiction—when it seeks to obtain administrative, rather than judicial, clearance for a voting change—may not enforce the change[6] until it has been submitted to the Attorney General and he

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[6] It is not disputed that the type of redistricting involved here is subject to the preclearance requirements of Section 5. Nor could it be. *E.g.*, *Georgia* v. *United States*, 411 U.S. 526 (1973); *United States* v. *Board of Supervisors of Warren County, Mississippi*, 429 U.S. 642 (1977).

"has not interposed an objection within sixty days after such submission * * *." But a change is not effectively "submitted" so as to commence the 60-day review period until the covered jurisdiction has provided the Attorney General with all information reasonably necessary for him to make an intelligent judgment whether the change is unobjectionable. That is the thrust of the regulations promulgated to implement Section 5, which this Court expressly sustained in *Georgia* v. *United States*, 411 U.S. 526, 536-541 (1973). See, also, *United States* v. *Sheffield Board of Comm'rs*, 435 U.S. 110, 136-138 (1978). Nevertheless, the district court, viewing the delay involved in this case with a hostile eye and construing one of the regulations in a most grudging way, concluded that the Attorney General's objection came too late. We submit this was plain error.

a. The operation and justification of the relevant regulations are outlined in this Court's decision in *Georgia*—a redistricting case like this one. As the Court there wrote, "[t]he judgment that the Attorney General must make is a difficult and complex one, and no one would argue that it should be made without adequate information." 411 U.S. at 540. Obviously enough, the bare text and history of the legislation enacting the voting change will often be insufficient for an intelligent appraisal of its potential impact, especially when redistricting is involved. It follows that the Attorney General must be entitled to ask for more. To hasten the process, the regulations list most of the data that may become relevant and "strongly

urge[s]" covered jurisdictions to provide it with their initial submission. 28 C.F.R. 51.10(b).[7] But, recognizing that this recommendation will not always be followed and that all the data listed are not required in every case, the regulations provide that the Attorney General shall notify the submitting authority what other information is needed. 28 C.F.R. 51.10 (a)(6).[8] In that event, the beginning of the 60-day period is postponed until the additional data are supplied. 28 C.F.R. 51.3(b), 51.18(a).[9] If this were

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[7] In relevant part, 28 C.F.R. 51.10(b) provides:

> In addition to the requirements listed in paragraph (a) of this section, each submission may include appropriate supporting materials to assist the Attorney General in his consideration. The Attorney General strongly urges the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:
>
> * * * * *

[8] Section 51.10(a)(6) provides:

> Each submission shall include:
>
> * * * * *
>
> (6) With respect to redistricting, annexation, and other complex changes, other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change. Such other information may include items listed under paragraph (b) of this section. When such other information is required, the Attorney General shall notify the submitting authority in the manner provided in § 51.18(a).

[9] Section 51.3(b) provides:

> The 60-day period shall commence upon reciept by the Department of Justice of a submission from an appropriate official, which submission satisfies the requirements

not possible, the Attorney General's "only plausible response to an inadequate or incomplete submission would be simply to object to it," a result that "would only add acrimony to the administration of § 5." 411 U.S. at 540-541.[10]

It is too late in the day to argue that these common sense procedures are inconsistent with the Act. Of course, the Court has not condoned abuse of the regulations by resorting to "unwarranted administrative conduct" that produces "frivolous and repeated delays"—such as demanding "unnecessary or irrelevant" information. See 411 U.S. at 540, 541 n.13. But, on the other hand, there is no basis, in the regulations or in this Court's opinion in *Georgia*, for fashioning an arbitrary rule to the effect that the At-

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of § 51.10(a). Procedures for requesting additional material and for determining the commencement of the 60-day period when a submission is inadequate are described in § 51.18.

Section 51.18(a) provides:

> If the submission does not satisfy the requirements of § 51.10(a), the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission.

[10] We note that the dissenting opinion in *Georgia* appears to endorse this reasoning. Indeed, Mr. Justice White spoke of the Attorney General's decision as required to be made only "within 60 days after receiving all information he deemed necessary." 411 U.S. at 543.

torney General is limited to a single request for further information and must act on the basis of the response, whether adequate or not. Only the most hostile reading of the relevant regulation would justify that result. Nor would such a one-request restriction serve any useful end.

b. The regulations expressly provide that a submission with respect to redistricting, annexation and other complex changes is not complete until it includes, in addition to the "bare-bones" specified for all cases (28 C.F.R. 51.10(a)(1)-(5)), "other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change." 28 C.F.R. 51.10(a)(6), *supra*, n.8. Among other data, the additional material may be a map showing the population distribution by race within the existing and proposed units (28 C.F.R. 51.10(b)(5)(iv)-(v)), and, separately, population information by race for the areas affected, both before and after the change (28 C.F.R. 51.10(b)(6)(i)). This is precisely what was requested in the present case. It is not suggested that the information was irrelevant. Rather, as we read its opinion, the district court held that the Attorney General, after making a timely request, should have rested content with the county's first response, expressly or impliedly indicating that the data were unavailable.

We submit that result was wholly without justification. When, as here, the Attorney General asks for necessary information not included in the original submission, "the 60-day period will not commence

until *such information* is received by the Department of Justice." 28 C.F.R. 51.18(a), *supra*, note 9 (emphasis added). Hence, a response that ignores the request or withholds the data sought is not effective to start the 60-day period running. In such a case, the Attorney General could, in theory, simply take no action, treating the submission as incomplete, but still alive, if dormant. Or he could, without further communication, simply enter an objection because, absent the missing information, it is impossible safely to judge the effect of the voting change. Finally, one supposes, the Attorney General could ask again. Should the Attorney General be faulted for following this more temperate course, both more polite and normally less wasteful of time and effort? There is no reason of policy for foreclosing a further attempt to secure needed information. And only the most inhospitable would read such a prohibition into the reference to "[t]he request" in Section 51.18(a) of the regulations (*supra*, note 9).[11]

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[11] When additional information is needed to complete the submission and the running of the 60-day period is postponed until it is received, the regulation reasonably requires the Attorney General to make his request "as promptly as possible" (*Ibid.*). Perhaps this should usually be construed to mean "within 60 days of the submission, at the latest." Cf. 28 C.F.R. 51.18(b). However, where the unforeseen need for further information or explanation emerges in the course of the analysis of material received from the submitting authority in response to a first request, a further request ought not be foreclosed. But, in any event, a mere repetition—in effect a reminder that the submission remains incomplete—of a timely request surely cannot be faulted as untimely.

To be sure, there may be instances in which a repeated request for information, in the face of a clear and convincing plea of unavailability, may amount to mere stubbornness. But this is plainly not such a case. Here, the county's initial response can only be described as apparently evasive. Indeed, as the Assistant Attorney General pointed out in his second request letter, the county's original submission had clearly stated that population figures—in addition to registered voter statistics—had been a basis of the redistricting and it was accordingly difficult to accept the response that "[w]e do not have any way of telling the total population of these districts before and after this change" (*supra*, page 7). Nor is it obvious why the racial map ultimately provided was not supplied when first expressly requested. In this case, the Attorney General merely exhibited patience, in one instance rewarded. That he could have interposed his objection sooner is no ground for holding ineffective his action after waiting until it became clear that a complete submission would never be forthcoming.

2. The upshot, we submit, is that the present decision conflicts with this Court's ruling in the *Georgia* case, upholding the Attorney General's regulations. It is, moreover, at odds with the administrative practice, which was known to Congress and approved by it. See *United States* v. *Sheffield Board of Comm'rs*, *supra*, 435 U.S. at 131-132. The regulations were issued in 1971 and the practical consequences were pointedly brought to congressional attention when the

Act was extended in 1975.[12] Concern was expressed about some delays and an amendment was adopted to hasten clearance in special situations. 42 U.S.C. (and Supp. V) 1973c; see H.R. Rep. No. 94-196, *supra*, at 9. Yet, as Congressman Edwards, the Chairman of the relevant subcommittee remarked, there was no intention "that any doubt whatsoever be cast upon the legality of the Attorney General's regulations, as already promulgated." 121 Cong. Rec. H4721 (daily ed. June 2, 1975).

The Attorney General has consistently interpreted his regulations so as to permit more than one request for additional information. This authority has been

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[12] The prepared statement of Assistant Attorney General J. Stanley Pottinger included an objection letter dated February 3, 1975, to Cochise County, Arizona, that described a Section 5 review which took more than fifteen months and included three requests for additional information. *House Hearings, supra,* at 262; *Senate Hearings, supra,* at 677. Mississippi Attorney General A. F. Summer testified that "the 60 day limitation means nothing under their submission rules and regulations. They have the option to toll the running of the 60 days at will * * *." *Senate Hearings, supra,* at 190. The Assistant Attorney General informed House Subcommittee Chairman Don Edwards on May 6, 1975, that the average time to review a submission to which an objection was made was 67 days, "due to requests for supplemental information." 121 Cong. Rec. H4725 (daily ed. June 2, 1975). Voting Rights Section Chief Gerald W. Jones testified that requests for additional information were made "very often." *House Hearings, supra* at 302. Virginia Attorney General Andrew S. Miller testified that his state had avoided severe delays due to requests for additional information by "working these matters out with the voting rights section * * *." *House Hearings, supra,* at 763.

used sparingly and judiciously. Out of a total of 5,450 submissions between January 1, 1976, and March 31, 1978, the Department found it necessary to make more than one request for additional information in 45 instances.[13] In the overwhelming majority of these cases, the receipt of the additional information resulted in a grant of clearance to the proposed voting change. For instance, of the 36 such submissions as to which final determinations have been made objections were interposed to eight while 28 were granted clearance by the Attorney General. This procedure has thus been successfully used to achieve the objective recommended by this Court in *Georgia* v. *United States*, *supra*—the avoidance of objections for lack of information. This has distinctly benefitted covered jurisdictions that would otherwise have been required to pursue the lengthy process of seeking a declaratory judgment from the United States District Court for the District of Columbia or, alternatively, to petition the Attorney General to reconsider the objection.

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[13] The Department requested additional information at least once in 404 submissions. Affidavit of Gerald W. Jones, Plaintiff-Intervenor's Motion for Reconsideration and Amendment of Judgment, filed May 5, 1978, at 2.

CONCLUSION

Probable jurisdiction should be noted and the judgment of the district court should be reversed. In light of this Court's decision in *Georgia* v. *United States*, *supra*, we suggest that plenary consideration may be unnecessary.

Respectfully submitted.

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NOVEMBER 1978

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

Civil Action No. DR-76-CA-24

[Filed Apr. 20, 1978]

RICHARD GARCIA, ET AL., PLAINTIFFS

and

UNITED STATES OF AMERICA, PLAINTIFF-INTERVENOR

vs.

UVALDE COUNTY, ET AL., DEFENDANTS

and

NORMENT FOLEY AND GENE ILSE,
DEFENDANT-INTERVENORS

MEMORANDUM OPINION AND ORDER

This is a Voting Rights Act case involving the 1973 reapportionment of Uvalde County, Texas' Commissioners Court Precincts. Private Plaintiffs brought this action on or about October 18, 1976 seeking a declaration that the Defendant County Officials had failed to secure the approval of the Attorney General or the District Court for the District of Columbia for their 1973 reapportionment and for injunctive relief preventing the continued implementation of that reapportionment plan. A single judge of this

Court denied the Plaintiffs' request for an order enjoining the election of the Commissioners but, following the election, the Defendant County Officials were ordered not to canvass and certify the results of the election. Thus, the two individuals who were unopposed and therefore presumably elected in the November, 1976 election for County Commissioners have not taken office and the two Commissioners sitting prior to the November election have held over in office.

The United States has intervened in this action as a Plaintiff. The two persons elected in the November, 1976 election for County Commissioners but not allowed to take office have intervened on the side of Defendants.

On April 11, 1978, trial on the merits was had before this Court at which time all parties presented testimony, evidence and argument. Having now heard and considered same, the Court enters this Memorandum Opinion and Order constituting its findings of fact and conclusions of law.

Uvalde County reapportioned its Commissioners Court Precincts after November 1, 1972. That reapportionment was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Private Plaintiffs and the United States contend that we need only note that the Attorney General has entered an objection to the reapportionment and on that basis grant them the declaratory and injunctive relief they seek. Given the facts surrounding the issuance of the objection letter

in this case, the issue is not as simple as Plaintiffs would have it. Coming to Court "armed" with an objection letter does not necessarily entitle Plaintiffs to the relief they seek. *Morris* v. *Gressette*, —— U.S. ——, 97 S.Ct. 2411 (1977). This Court can review the circumstances in which the objection letter was issued in order to determine whether it was validly and timely issued. *Morris* v. *Gressette*, *supra*; *Georgia* v. *United States*, 411 U.S. 526, 93 S.Ct. 1702 (1973). An extensive review of the facts is appropriate.

In August of 1973, the Commissioners Court of Uvalde County gave final approval of a plan to change the boundaries of the four precincts from which its members are elected.[1] Prior to that change the County was seriously malapportioned. In Texas, two Commissioners are elected every two years for four year terms and in November, 1974, the two Commissioners elected in Uvalde County were elected pursuant to the 1973 reapportionment scheme.[2]

In September, 1975, Texas was for the first time brought within the coverage of the Voting Rights Act, 42 U.S.C. § 1973, *et seq.* See *Briscoe* v. *Bell*, —— U.S. ——, 97 S.Ct. 2428 (1977). According to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, a local political subdivision or state that

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[1] This 1973 boundary change will be referred to as the "plan" or the "1973 reapportionment".

[2] One of those Commissioners, Mr. Gilbert Torres, was originally a Party Defendant in this cause but, upon his own motion, was realigned as a Party Plaintiff.

is covered by the Act may not enforce a post-November 1, 1972 change affecting voting until the change is approved by the District Court in the District of Columbia or is not objected to by the Attorney General after its submission to him. It is conceded by all parties that the reapportionment here was the kind of change affecting voting that requires Section 5 approval.

Rather than bring suit in the District of Columbia, Uvalde County chose to submit its 1973 reapportionment to the Attorney General for his determination of whether the reapportionment had the purpose or effect of discriminating on the basis of race or language status. See 42 U.S.C. § 1973c; *Beer* v. *United States*, —— U.S. ——, 96 S.Ct. 1357 (1976); *City of Richmond* v. *United States*, 422 U.S. 358, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975).

On March 22, 1976, Uvalde County commenced what was to become an almost seven month submission process. On that date, the County Judge submitted the 1973 reapportionment to the Attorney General's Civil Rights Division.[3] Along with his letter explaining the reasons for, the circumstances surrounding and the results of the 1973 reapportionment, the County Judge sent newspaper clippings describing the changes in precinct boundaries, copies of letters to and from various persons interested in

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[3] The submission was received in the Attorney General's office on March 25, 1976.

the reapportionment and voting statistics illustrating the effects of the changes.[4]

None of the parties seriously contend that this March submission ("initial submission") did not provide at least some of the items that the regulations state each submission "shall" include. 28 C.F.R. § 51.10(a)(1)-(5). However, the regulations also require a submission to include "other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change." 28 C.F.R. § 51.10(a)(6).

Some 58 days later, on May 19, 1976, a letter was sent from the Attorney General's office to the County Judge advising him that the initial submission had been received but that more information was needed in order to evaluate the submission. The County Judge was further advised that the sixty day period allowed the Attorney General by Section 5 of the Voting Rights Act to consider a submission would not commence until the additional information was received. In this May 19, 1976 letter the Attorney General's office requested information concerning the total population and registered voters by race for each of the Commissioners Precincts both before and after the adoption of the 1973 reapportionment. The County was further advised that if exact statistics were not available estimates should be provided. The County was also requested to supply the Attorney

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[4] See the dates and exhibits referred to in the Stipulated Facts section of the Pre-Trial Order.

General's office with a map of the County showing the boundaries of the precincts both before and after the reapportionment and was requested to indicate on the map or on a separate map the geographic areas of the County inhabited primarily by persons of Spanish heritage.[5]

On May 28, 1976, the County Judge responded to the Attorney General's first request for additional information letter referred to above. In this letter, the County Judge responded to each of the requests made by the Attorney General in his additional information letter. First, the County Judge attached to the letter a chart showing the number of registered voters by race and ethnicity for each precinct before and after the reapportionment. Second, he included maps of the City and of the County of Uvalde showing the precinct boundaries and he described in his letter the areas in which the Mexican-American population tended to concentrate. However, with respect to the Attorney General's request for exact population figures or estimates of total population, as opposed to the number of registered voters, in each precinct, the County Judge made the following statement:

> "We do not have any way of telling the total population of these districts before and after this change was made."

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[5] This May 19, 1976 letter will be sometimes referred to as the first request for additional information letter.

Such a statement on behalf of the submitting authority was not only appropriate but required by the regulations of the Attorney General. 28 C.F.R. § 51.10(b)(8).

Thus, as of June 1, 1976, the date on which the County Judge's May 28, 1976 letter with enclosures responding to the Attorney General's first request for additional information letter was received, Uvalde County had (1) made the initial submission of the 1973 reapportionment and (2) supplied the Attorney General with all of the information he had requested that was available to the County.

Uvalde County contends that the sixty day period in which the Attorney General had to decide whether or not to object to the submitted reapportionment started on the date the Attorney General's office received the May 28, 1976 letter. Private Plaintiffs and the United States, on the other hand, argue that the sixty day period did not commence at that time because the submission was still incomplete.

On July 30, 1976 the Attorney General's office again advised the Uvalde County Judge that more information was needed to evaluate the submission. In this second request for additional information letter the Attorney General's office requested information that had not been theretofore requested.[6]

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[6] Because the Attorney General's office was being inundated with submissions during this period, the Uvalde County submission was reassigned in mid course from its original analyst to one who had more experience in Texas reapportionment submissions.

Inexplicably, the County Judge was also asked again to supply the Attorney General's office with population figures by race for each Commissioner Precinct before and after the 1973 reapportionment. The County Judge had already stated, as he was required to do by the regulations, that this information was unavailable.

On August 12, 1976, the County Judge responded to the Attorney General's second request for additional information letter by providing the Attorney General's office with the available requested information. Concerning the request for population figures by race by precinct, the County Judge once again advised the Attorney General's office that the information was simply not available. Thereafter, on October 13, 1976, about 205 days after the submission process started, the Assistant Attorney General for the Civil Rights Division of the Department of Justice interposed an objection to Uvalde County's 1973 reapportionment.

Private Plaintiffs and the United States, on whom the burden of proof lies, contend that this October 13 objection was timely and, therefore, they should be granted the declaratory and injunctive relief they seek. Relying on *Georgia* v. *United States*, 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973), they contend that the Attorney General has "carte blanche" authority to make as many requests for additional information, each time postponing the commencement of the sixty day period, as he deems appropriate. The Defendants, on the other hand, while not stren-

uously denying the Attorney General the right to make more than one request for additional information, argue that he cannot use the additional information request procedure to postpone more than once the commencement of the sixty day period. Based on the factual circumstances here, we agree with the Defendants.

As mentioned above, the Attorney General has promulgated regulations establishing procedures for the administration of Section 5 of the Voting Rights Act. 28 C.F.R. § 51. Although Section 5 of the Voting Rights Act makes no provision for requests for additional information postponing the start of the sixty day period, the regulations do allow this procedure. 28 C.F.R. § 51.18. There it is provided as follows:

> "If the submission does not satisfy the requirements of § 51.10(a), the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the sixty day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission." 28 C.F.R. § 51.18(a).

This subsection of the regulations has been upheld as reasonable and valid. *Georgia* v. *United States*, *supra.*

Nevertheless, the regulations do not allow repeated requests for additional information to con-

tinue postponing the start of the sixty day period once the originally requested information is received. That part of the regulation quoted above makes it clear that when "such information" as is requested is received by the Department of Justice, the sixty day period will commence. Nowhere is it provided that the Attorney General can thereafter request still more information and again postpone the start of the sixty day period. The regulations refer to "the request". This wording is evidence that those drafting the regulations intended that there be only one such request allowing the postponement of the sixty day period.

We think this construction of the regulations is the better one for another reason. The regulations as so read will not tie the hands of the Attorney General during the submission process. He may still request additional information from the submitting authority "at any time *during* the sixty day period". 28 C.F.R. § 51.18(b)(1) (emphasis added). Thus, he can obtain any extra data or clarification he wants while not unduly lengthening the submission process.

At the hearing of this cause, counsel for the United States argued that the Attorney General should have the right to continue to postpone the start of the sixty day period by requesting additional information as long as it appears that such requests might be fruitful. We do not believe that Congress, by providing in Section 5 of the Voting Rights Act that the Attorney General should make his determi-

nation within sixty days of the submission, intended to give the Attorney General such carte blanche authority. The congressional intent was assessed recently by the Supreme Court in the following manner:

> "In light of the potential severity of the § 5 remedy, the statutory language, and the legislative history, we think it clear that Congress intended to provide covered jurisdictions with an expeditious alternative to declaratory judgment actions. The congressional intent is plain: the extraordinary remedy of postponing the implementation of validly enacted state legislation was to come to an end when the Attorney General failed to interpose a timely objection based on a complete submission. Although there was to be no bar to subsequent constitutional challenges to the implemented legislation, there also was to be 'no dragging out' of the extraordinary federal remedy beyond the period specified in the statute." *Morris* v. *Gressette*, —— U.S. ——, 97 S.Ct. 2411, 2420 (1977).

As mentioned previously, the submission process in the case now before us was "dragged" out by the Attorney General's office over a 205 day period by the employment of the "request for additional information" procedure. As is evident here, this procedure does not result in the "expeditious" remedy intended by Congress.

Our interpretation of the regulations as not allowing serial requests for additional information to continue postponing the start of the sixty day period does not conflict with the decision of the Supreme

Court in *Georgia* v. *United States, supra.* In *Georgia,* as previously stated, the Court upheld, under the circumstances presented there, the basic validity of the regulation allowing the Attorney General to postpone the start of the sixty day period until a complete submission was received. The Court stated that if the Attorney General is not allowed to request additional information he would often be compelled to make his statutory determination on the basis of incomplete and inadequate information. This result, the Court stated, would only add acrimony to the administration of the submission process.

In that case, however, there was only one request for additional information and that request was made within two weeks after the initial submission was received. Here, on the other hand, there were two requests for additional information and each request was made close to the sixtieth day after the receipt of prior correspondence. The request for additional information procedure is designed to avoid acrimony. If allowed to be used in the way it was used here, it would add acrimony. Once the submitting authority complies with the Attorney General's request for additional information the sixty day period commences. The Attorney General may not further postpone the commencement of that period by requesting still more information or by repeating his request for information which the submitting authority has already stated to be unavailable.

Applying this principle to the case before us we find that the sixty day period commenced on the

date that the Attorney General's office received Uvalde County's response to the first request for additional information letter, June 1, 1976. By that date, the Attorney General had been supplied the information he requested in his May 19, 1976 letter except for the population (as opposed to registered voters) information which the County Judge stated was not available. The submission was, therefore, according to the regulations, complete. Since the Attorney General failed to interpose an objection to the 1973 reapportionment within sixty days following June 1, 1976, that reapportionment scheme may be enforced by Uvalde County. The injunctive order heretofore in effect is hereby dissolved and all relief sought by Private Plaintiffs and by the United States is denied. The complaints are dismissed.

It is so ORDERED.

ORDERED and ENTERED this 20th day of April, 1978.

/s/ Thomas Gibbs Gee
THOMAS GIBBS GEE
United States Circuit Court Judge

/s/ Adrian Spears (Dissenting)
ADRIAN SPEARS
United States District Judge

/s/ John H. Wood, Jr.
JOHN H. WOOD, JR.
United States District Judge

SPEARS, District Judge, Dissenting:

Although the majority says that this Court can review the circumstances in which the objection letter was issued in order to determine whether or not it was valid and timely (Op. p. 2), this proposition of law is not free from doubt. See *Morris* v. *Gressette*, 432 U.S. 491, 501; and *Georgia* v. *United States*, 411 U.S. 526, footnote 13, p. 541. Nevertheless, for the purpose of this dissent it will be assumed, but not admitted, that the majority is correct.

While the "seven month submission process" discussed by the majority troubles me considerably, I cannot, in light of the record herein, attribute all of this inordinate delay to the Attorney General. On the contrary, a substantial amount of the blame for the "dragging out" of the process must be shared by the County, and since I am convinced that the July 30, 1976 letter written by the Attorney General to the submitting authority was both appropriate and timely under the circumstances, I must respectfully dissent.

The threshold problem presented by the majority is that of interpreting the regulations published by the Attorney General, 28 U.S.C. § 51.01 et seq., which govern the submission of changes affecting voting to the Justice Department for preclearance. I agree that the spirit of the Act, and the regulations thereunder, call for a construction which would allow the Attorney General a period of sixty days following receipt of a submission to review the materials be-

fore him and determine from them that either (1) an objection is called for, (2) no objection is called for, or (3) no determination to make or withhold an objection is possible on the basis of the material submitted, and that additional information is needed from the submitting authority. Further, I agree that should the third alternative prove necessary, the Attorney General must request all material he needs within the initial sixty day period. He may make a series of requests, but all must be made within that time. He is then entitled to wait until all information so requested is received from the submitting authority before the sixty day period in which he must object begins to run.

Applying this construction to the case before us, one must begin with the initial submission by Uvalde County. The letter accompanying the submission, dated March 22, 1976, states that the committee charged with formulating a new redistricting plan "used the voter list, the census report, a spot map kept by the City of Uvalde showing the density of utility users and all other information they could receive." The text of the letter specifically states that the redistricting was not accomplished by a prior committee due to an objection lodged by Gilbert Torres, a plaintiff in the present suit, that census data was not considered in the first redistricting plan.

The initial submission letter was received by the Attorney General on March 25, 1976. Within sixty days thereafter, on May 19, 1976, the Attorney General sent a letter requesting additional information.

Among the items requested in this letter was the following:

> The total population and number of registered voters by race (white-Anglo, black and Spanish heritage) for each of the precincts in question before and after adoption of the changes. If exact statistics are not available, please provide your best estimates and advise us of the basis for such estimates.

In reply, the County Judge of Uvalde County sent his letter of May 28, 1976, in which he stated:

> We do not have any way of telling the total population of these districts before and after this change was made. We do have, and I am enclosing herewith, a list showing the persons by voter registration.

The next communication between the parties was the July 30, 1976 letter from the Attorney General to the County Judge, wherein the following information was requested:

> Estimates of the total population by race (white-Anglo Mexican American, and Black) in Uvalde County, as well as population totals by race for each of the Commissioner precincts before and after adoption of the changes. Please indicate the basis for your estimates. In this regard, *your correspondence indicates that in the reapportionment voter registration data as well as population data were taken into account.*
>
> Furthermore, the Redistricting Committee, appointed by the Uvalde County Commissioner's

> [sic] Court, in their report, *indicates that 1970 census tabulations as well as a population density map for the City of Uvalde was available for their consideration. Please advise us of the specific data utilized in your determination.* (Emphasis supplied).

At first glance, the July 30 request seems repetitious of the one made in the May 19 letter, to which the County responded that the information sought was simply unavailable. However, if reference is made to the original submission letter and the attachments thereto, it appears that the 1970 census report was in fact used by the Redistricting Committee in its formulation of a plan. The original submission fails to specify what census information was used or how it was used, and it seems to me that the repeated requests of the Attorney General are directed at this point, as indicated by the wording of the July 30 request, and the deposition testimony of Robert Chavez, a Department of Justice analyst, (Chavez, p. 22, first question—p. 23, third question).

In evaluating a situation such as this, the good faith of the Attorney General and his delegates must be presumed, and inasmuch as the defendants are affirmatively attacking the administration of the Attorney General's procedures, it would appear that it is incumbent upon them to show "unwarranted administrative conduct" resulting in "frivolous and re-

peated delays by the Justice Department." *Georgia* v. *United States*, 411 U.S. 526, footnote 13, p. 541.[1]

I do not believe that the record supports a finding of any such conduct on the part of the Justice Department in this case. As I see it, the Attorney General acted reasonably in writing the July 30th letter, given the apparent conflict in the information supplied by the submitting authority. The regulations emphasize the value of population statistics in the evaluation of changes in voting practices or procedures which involve redistricting. 28 CFR § 51.10 (b)(5) and (6). The requests for such information are certainly supportive of the argument that the Attorney General's office was searching for a basis upon which it might sustain the Uvalde County reapportionment. Each letter requesting additional information contains an offer to aid the submitting authority in complying therewith, an offer the benefits of which the submitting authority in this case failed to avail itself.

The County's letter of May 28, 1976 was received by the Attorney General on June 1, 1976, so the July 30th letter from the Attorney General was timely. The time-table of events demonstrates that on August 12, 1976, the County responded to the Attorney General's letter of July 30, 1976. This response was received by the Attorney General on

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[1] But even if, as the majority says, the burden of proof to show that the October 13 objection was timely lies upon the plaintiffs, the record, as I read it, reflects that such burden has been fully satisfied.

August 14, 1976, and he registered his objection within sixty days thereafter, on October 13, 1976. I would, therefore, continue in force the injunctive relief heretofore granted, and extend that relief to cover the May 6, 1978 party primaries.

/s/ Adrian A. Spears
ADRIAN A. SPEARS
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

Civil Action DR-76-CA 24

[Filed Apr. 27, 1978]

RICHARD GARCIA, ET AL., PLAINTIFFS

and

UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR

vs.

UVALDE COUNTY, ET AL., DEFENDANTS

and

NORMENT FOLEY AND GENE ILLSE,
DEFENDANTS-INTERVENORS

JUDGMENT

Be it remembered that on the 11th day of April, 1978 came on to be heard before this specially constituted Three-Judge Court the complaint of Plaintiffs, Richard Garcia, Et al. and the United States of America, Plaintiff-Intervenor, for declaratory and injunctive relief against Uvalde County Et Al. The Court, having heard the evidence and arguments of counsel, is of the opinion that judgment should be entered for Defendants. It is therefore,

ORDERED, ADJUDGED and DECREED that the injunctive orders heretofore in effect are hereby dissolved; that all other relief sought by the Plaintiffs and Plaintiff-Intervenor be and is hereby DENIED; that Defendants be allowed to continue in effect the 1973 reapportionment of Uvalde County's Commissioners' precincts; and that all costs of Court be taxed against Plaintiffs and Plaintiff-Intervenor.

SIGNED this the 27th day of April, 1978.

/s/ Thomas Gibbs Gee
THOMAS GIBBS GEE
United States Circuit
Court Judge

DISSENTING

ADRIAN SPEARS
United States District Judge

/s/ John H. Wood, Jr.
JOHN H. WOOD, JR.
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

Civil Action No. DR-76-CA-24

[Filed Jun. 28, 1978]

RICHARD GARCIA, ET AL., PLAINTIFFS

and

UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR

vs.

UVALDE COUNTY, ET AL., DEFENDANTS

and

NORMENT FOLEY AND GENE ILSE,
DEFENDANTS-INTERVENORS

AMENDED ORDER

Came on for consideration by this Court the Motion made by Plaintiffs, Richard Garcia, et al., that the Court reconsider its April 20, 1978 Memorandum Opinion and Order and its April 27, 1978 Judgment, and, came on for consideration by this Court the Motion made by the United States of America, Plaintiff-Intervenor, that this Court reconsider and amend its April 27, 1978 Judgment. After considering these

Motions and all pleadings, affidavits and memoranda in support thereof, the Court is of the opinion that these Motions should be, in all things, denied. It is therefore,

ORDERED, ADJUDGED and DECREED that the Motions of Plaintiffs and Plaintiff-Intervenor, hereinabove referred to, and the relief requested therein is hereby denied.

ENTERED this 19th day of June, 1978.

/s/ Thomas Gibbs Gee
THOMAS GIBBS GEE
United States Circuit Judge

/s/ Adrian A. Spears
ADRIAN A. SPEARS
United States District Judge

/s/ John H. Wood, Jr.
JOHN H. WOOD, JR.
United States District Judge

SPEARS, District Judge, Dissenting:

Since there is no question but that Uvalde County is covered by § 5 of the Voting Rights Act, and that said county has been subjected to the required federal scrutiny,[1] I do not believe that this Court has jurisdiction to determine whether or not the objection letter was timely filed by the Attorney General; nevertheless, even if this Court does have jurisdiction to determine the timeliness of the Attorney General's objection, I am of the opinion that he acted within the time limits allowed him by the Act. As a consequence, I would grant the motions for reconsideration without regard to the additional grounds set forth therein.

Dated this 28th day of June, 1978.

/s/ Adrian A. Spears
ADRIAN A. SPEARS
United States District Judge

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[1] See dissent filed April 20, 1978, page 1. Also see *Perkins v. Matthews*, 400 U.S. 379, 383 (1971).

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

Civil Action No. DR-76-CA-24

[Filed Aug. 17, 1978]

RICHARD GARCIA, ET AL., PLAINTIFFS

and

UNITED STATES OF AMERICA,
PLAINTIFF-INTERVENOR

vs.

UVALDE COUNTY, ET AL., DEFENDANTS

and

NORMENT FOLEY AND GENE ILSE,
DEFENDANTS-INTERVENORS

NOTICE OF APPEAL

Notice is hereby given that the United States of America, Plaintiff-Intervenor, hereby appeals to the Supreme Court of the United States pursuant to 28 U.S.C. Section 1253 and 42 U.S.C. Section 1973c, and

from the Judgment entered on April 27, 1978, and the Amended Order entered on June 19, 1978.

BRIAN LANDSBERG
Chief, Appellate Section
Civil Rights Division
Department of Justice
Washington, D.C. 20530

JAMIE C. BOYD
United States Attorney

BY: /s/ Hugh P. Shovlin
HUGH P. SHOVLIN
Assistant U.S. Attorney
655 East Durango Boulevard
Suite G-13
San Antonio, Texas 78206

APPENDIX E

March 18, 1976

Honorable Leo Darly
County Judge
County Courthouse
Uvalde, Texas 78801

Dear Judge Darly:

The State of Texas is now covered under Section 5 of the Voting Rights Act of 1965 (as amended in 1975), which requires that changes affecting voting enacted or administered by the State or its political subdivisions since November 1, 1972, be submitted to the Attorney General of the United States or the United States District Court for the District of Columbia for preclearance prior to implementation.

It has recently come to our attention that Uvalde County, Texas has reapportioned its County Commissioner Precincts since November 1, 1972. Such a change affecting voting is subject to the preclearance requirements of Section 5.

In view of the April 3, 1976 election date, would you please inform me as soon as possible as to whether the County intends to submit its reapportionment plan for the commissioner precincts pursuant to Section 5. Should the county choose to submit these changes to the Attorney General, the applicable guidelines are included for your convenience.

If you have any questions regarding this matter or if we may assist you in any way, please do not

hesitate to contact Ms. Yvonne Lee, Departmental Research Analyst at (202) 739-3887.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

COUNTY OF UVALDE

[SEAL]

TEXAS

UVALDE, TEXAS

March 22, 1976

[Received Mar. 25, 1976]

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger;

This is in reply of your letter of March 18th in regard to redistricting of the Uvalde County Commissioners precincts.

Uvalde County was probably the most unbalanced County in the United States insofar as voters were concerned in each Commissioners precinct before we redistricted. One of our precincts had probably less than 300 people, another one had 400 people, another one had possibly 600 people and the remaining one 3,000. This was due to the fact that the City of Uvalde has been far the largest populated. We had been called upon by several people interested in civil rights to redistrict our precincts. I discussed this in detail several times with Mr. Jesse Gamez, an attor-

ney in San Antonio, Texas who was connected with the La Raza Party in Texas and with the Mexican American Legal Defense and Education Fund in San Antonio.

This was first brought to the Commissioners Court attention in 1969 whereafter a full discussion a motion was made, by the Commissioner having the fewest number of people in his district, that the County be redistricted according to the Supreme Court case of one man one vote rule. The Court proceeded to appoint a twelve member committee of people from all parts of the County, including Mexican-Americans and Anglos, to study this problem and made a recommendation as to how the precincts should be changed. This Committee worked long and hard and came up with a plan which they recommended. Whereupon the Commissioners Court called a public hearing on the plan and everyone was pleased except one person. Mr. Gilbert Torres appeared at such meeting and objected to the plan because the only thing the committee had used was the voter list. He claimed we should have used the census report. It was explained to him that we had nothing like a new census report and that the old one was probably useless and the committee had done the best they could. Mr. Torres claimed that he represented a certain group of Latin Americans and if this plan was carried through they would file suit. Whereupon the Court voted unanimously not to redistrict at all.

Again in 1973, after the new census report was out, the Court again voted unanimously to redistrict

and appointed practically the same committee to draw up the details of this redistricting. At this time they used the voter list, the census report, a spot map kept by the City of Uvalde showing the density of utilities users and all other information they could receive. Upon completion of their work they advised the Commissioners Court and another public meeting was called by the Court for July 10, 1973. I am enclosing herewith a copy from the Uvalde Leader News giving this information. To make this completely legal under the law the Court reaffirmed their action at their Regular meeting in August that year. All four County Commissioners voted in favor of the plan. The Commissioners were W.T. Shurley, Commissioner Precinct #1, Austin Schaefer, Commissioner Precinct #2, George Moore, Commissioner Precinct #3 and Virgil Sutherland, Commissioner Precinct #4. All of this action was taken by unanimously vote of the Court.

Mr. Jesse Gamez and a number of Mexican-American people he represented appeared at the above public hearing. Upon completion of the report and the adoption of it by the Court Mr. Gamez arose and made the public statement that he felt that this was the fairest redistricting plan he had ever known and he wanted to congratulate the members of the committee and the Commissioners Court for their action.

The committee who recommended the division of the County into Commissioners precincts did not number the precincts but simply referred to them

as A, B, C and D. Under our Texas law two of our Commissioners have to run each two years and I pointed out to the Court unless we numbered the precinct containing the majority of the Mexican-Americans as either precinct 2 or 4 that these people would be denied a commissioner for at least 4 more years, as these were the Commissioners that had to run next. The Court agreed that this was right and that this precinct should be so numbered. The two Commissioners, Mr. Austin Schaefer and Mr. Virgil Sutherland, immediately began an argument as to which one of their precinct number should be given to this new precinct. They, of course, would not be able to be elected in this precinct over a Mexican American citizen. They could not settle this argument. Mr. Kessler who had headed the redistricting committee happened to come into the Courtroom and we ask him to suggest some method. He immediately stated that in his opinion the two commissioners should draw lots as to the number of their precinct. This was done and Mr. Austin Schaefer lost and his precinct #2 was designated for this precinct.

Although Mr. Schaefer consistently voted for this redistricting at every step of the way and was enthusiastic over the way it was being done, however, after he lost on the numbering of the precincts and saw that he could not be elected he immediately started a campaign of opposition to the entire plan. He had some twelve people who were his ardent supporters from Sabinal before the Court on two occa-

sions and on the last occasion was represented by an attorney, Mr. James R. Gillespie. I am attaching a letter hereto dated February 27, 1974 which I sent to Mr. Gillespie in regard to the matter and a copy of his letter of March 8, 1974 in reply thereto. At the last meeting Mr. Gillespie appeared together with these some twelve people all Mr. Schaefer's supporters together with a Court reporter and had a long hearing after which the Court refused to change their minds in favor of Mr. Schaefer.

On March 14, 1974 Mr. Austin Schaefer again made a motion to redo the Commissioners precincts and which motion failed to receive a second. I am enclosing herewith a copy of an article of March 14, 1974 from the Uvalde Leader News showing this action:

I immediately became sure that a suit would probably be filed on this matter by Mr. Schaefer, or some of his supporters. One of his supporters, Mr. Eddie Kirkham, who lives here in Uvalde was very out spoken about the matter. On March 15, 1974 I wrote Mr. Jesse Gamez, the Attorney who represented the La Raza Party and sent a copy to Mexican-American Legal Defense and Education Fund advising them of these facts and asking them for possible help in case a suit was filed. I received Mr. Gamez's reply dated May 28, 1974. A copy of both of these letters are attached.

We received a letter on January 23, 1973 from Mr. C.M. Miles, United States Director on Civil

Rights, and I replied to his letter on January 24, 1973, copies of both of these letters being attached hereto.

We are very proud of the fact that our redistricting effort came easily within the guide lines set by the Supreme Court. I am enclosing herewith a copy of a letter of May 8, 1974 from the Uvalde County Democratic Executive committee showing the number of votes cast and the Commissioners precincts involved. I am also enclosing herewith the votes cast in the General Election November 5, 1974 by Commissioners precincts.

I am sure that you have probably received letters of complaints from some person or persons regarding this. I am sure that it all stemmed from the fact that Mr. Schaefer was forced out of office by reason of these. He is now a resident of precinct #3 and is running against Mr. George Moore, the present incumbent but so far as I can tell has very little chance of winning.

We are very proud of the way we created these election precincts in order to give everyone a chance to elect a Commissioner. We could have redistricted by having every precinct run into the City of Uvalde. In case we had done this no Mexican-American could ever been elected County Commissioner. We have a very fine population of Mexican-American people here and a vast majority are of the highest character. The only trouble is that they will vote for an Anglo just as quick as they will one of their own

people. Commissioners precinct #4 has now become almost half and half and precinct #1 has a very large population of Mexican-American people. We do not have over 20 adult colored people living here.

You will notice from the above we had no trouble whatever with the Mexican-American minority interest in this redistricting as they were perfectly satisfied. The trouble we had was with one of our Anglo Commissioners who lost his job of the re-numbering of the precincts.

I am sorry that I am making this letter so long but I just wanted you to understand some of the facts and differences that we have had and again I want to say that we think we have done everything possible in this matter to make sure a compliance with the law and the Supreme Court.

As you know Texas was just recently including under the Voting Rights Act. We have held one Commissioners Court election after redistricting and before the Voting Rights Act went into effect without any trouble whatever. We certainly do want the Attorney General's Office to settle this matter and do not want to file a suit in the U.S. District Court of the District of Columbia.

Sincerely yours,

/s/ Leo Darley
LEO DARLEY
Uvalde County Judge

LD/mbt
Enc.

COUNTY OF UVALDE

[SEAL]

TEXAS

UVALDE, TEXAS

May 17, 1976

[Received May 19, 1976]

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger;

This is in regard to your letter of March 18th in regard to redistricting of the Uvalde County Commissioners Precincts.

This morning Ms. Lee from your office called me by long distance and ask me several questions. One of these questions was whether or not election boxes were changed at the time these precincts were changed. I explained to her that some of them were changed to some extent because of the fact that an election box under Texas law must be located entirely within a Commissioners precinct. This is understandable because each Commissioner runs from these separate precincts.

I told Ms. Lee that I thought we created only one new precinct. After studying our records I find that we actually created three new election precincts. I am attaching hereto an outline of how these election boxes are located in these Commissioners precincts. The new election box at Anthon School in Commissioners Precinct #2 was entirely new and was for the convenience for the voters in the west side of this Commissioners Precinct. The new election box in this same Commissioners Precinct #19 West Garden School was simply a division of the Robb School box in order to cut down the size of this Robb School box which was entirely too large. West Garden School is located almost in the center of Commissioners Precinct #2. The new Precinct #5 at the Old Hospital Building created in Commissioners Precinct #3 was done as it was necessary to run Commissioners Precinct #3 into the city limits of Uvalde in order to obtain enough people to meet the one man one vote rule. The balance of the voting boxes in this Precinct are all country boxes.

I just didn't want to mislead you in any way and thought it best to write you further. I am also enclosing herewith a copy of the Committee's report which the Court appointed to advise them in regard to this redistricting dated July 6, 1973. You will notice that they set out how they think the election precincts should be constructed. This was followed to the letter. The last page of this report shows an interesting fact, the total registration of voters by

Commissioners Precincts before the redistricting of these precincts were carried out. You will notice that Precinct #1 had 80.2% of the voters and the other precincts had a very small number and we were totally unbalanced. I have heretofore sent to you election results which show that by voter size these precincts are almost even and readily meet the Supreme Court requirements.

As I advised Ms. Lee this morning Uvalde County only had one Mexican-American on the ballot in the Democratic Primary. A man who ran for Constable in the City of Sabinal, a small town in the east part of the County. He lost the race and the only other candidate, an Anglo, won. As I advised you before it is very common here for the Mexican-American people to vote for an Anglo for any office and vice versa, the Anglo will vote for a good Mexican-American for office.

Sincerely yours,

/s/ Leo Darley
LEO DARLEY
Uvalde County Judge

LD/mbt
Enc.

19 May 1976

Honorable Leo Darley
County Judge
Uvalde County Courthouse
Uvalde, Texas 78801

Dear Judge Darley:

This is in reference to the Uvalde County Commissioner Precinct line changes by Uvalde County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 25, 1976.

After a preliminary examination of the initial submission, this Department has determined that the information sent is insufficient to enable the Attorney General to determine that the proposed changes do not have the purpose and will not have the effect of abridging the right to vote on account of race. In order to aid us in evaluating the submission, we would appreciate your providing us with the following information:

1. The total population and number of registered voters by race (white-Anglo, black and Spanish heritage) for each of the precincts in question before and after adoption of the changes. If exact statistics are not available, please provide your best estimates and advise us of the basis for such estimates;

2. A map of Uvalde County showing the outlines of precincts before and after adoption of the changes; and

3. An indication on the map described above, or on a separate map, of the geographic areas which

are inhabited primarily by persons of Spanish heritage.

As you know the Attorney General has 60 days in which to consider a submission pursuant to Section 5. This 60-day period will commence when this Department receives the information necessary to evaluate properly the changes proposed in your submission.

If you have any questions concerning the matters discussed in this letter or if we can aid you in any way to obtain the additional information we have requested, please do not hesitate to call Yvonne Lee (202—739-3887) of my staff, who has been assigned to handle this submission. Please refer to File X5572 in any written response to this letter so that your correspondence will be properly channelled.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

COUNTY OF UVALDE

[SEAL]

TEXAS

UVALDE, TEXAS

May 28, 1976

[Received May 31, 1976]

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger;

This is in reply of your letter of May 19 in regard to the Uvalde County Commissioners Precincts lines which were changed in 1973. We do not have any way of telling the total population of these districts before and after this change was made. We do have, and I am enclosing herewith, a list showing the persons by voter registration. This list is as near as correct as we can make it as we counted the names from the voting list. As I advised you before we have a very, very small number of colored people living in this County.

We are also enclosing herewith two maps showing the old Commissioners districts and the new Commissioners districts. We are also showing by a small

printed map the town of Uvalde and how these Commissioners precincts divide this town. It is the only town of any size in the County and is of course is the County seat.

The Latin-American population when this redistricting was done practically all lived in what is now new Commissioners Precinct 2. A considerable number also lived in new Precinct 4 to the north. Very few lived in the other precincts. You will notice by the map of the old precincts that Commissioner Precinct 1 included all the town of Uvalde and a large rural area. Since the new precincts were adopted we have had a Government housing project built in new Commissioners Precinct 1 and a considerable number of Latin-Americans live there at this time. The Latin-American population in Precinct 4 has also increased considerably.

Actually, Mr. Pottinger, the committee on this redistricting made an effort to give the Latin-American population at least one Commissioner. This was made possible by the creation of Precinct 2 of the new district. This is almost all Latin-American's. They also included many Latin-Americans in new Precinct 4 as above mentioned.

Any other way these precincts are changed would do nothing but dilute the voting strength of the Latin-Americans. As mentioned in my former letter we have a very high class type of Latin-American people living here in Uvalde. The trouble is they will vote for an Anglo just about as quick as they will a Latin-American and the Anglo will vote for a good Latin-

American candidate just about as quick as they will an Anglo candidate.

We think we have done an excellent job for the Latin-Americans and I hope that this will help to explain it to you.

Sincerely yours,

/s/ Leo Darley
LEO DARLEY
Uvalde County Judge

LD/mbt
Enc.

P.S. You must also keep in mind in this redistricting we not only tried to redistricting to aid the Latin-Americans but we had to also meet the one vote-one man rule in numbers which made it extra difficult.

July 30, 1976

Honorable Leo Darley
County Judge
County Courthouse
Uvalde, Texas 78801

Dear Judge Darley:

This is in reference to the change in precinct lines in Uvalde County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your original submission was received on March 25, 1976. More information was received on May 31, 1976.

After an examination of the material submitted, this Department has determined that the information sent is insufficient to enable the Attorney General to determine that the proposed changes do not have the purpose and will not have the effect of abridging the right to vote on account of race, color or membership in a language minority group. In order to aid us in evaluating the submission, we would appreciate your providing us with the following information:

1. Estimates of the total population by race (White-Anglo, Mexican American, and Black) in Uvalde County, as well as population totals by race for each of the Commissioner precincts before and after adoption of the changes. Please indicate the basis for your estimates. In this regard, your correspondence indicates that in the reapportionment voter registration data as well as population data were taken into account.

Furthermore, the Redistricting Committee, appointed by the Uvalde County Commissioner's Court, in their report indicates that 1970 census tabulations as well as a population density map for the City of Uvalde was available for their consideration. Please advise us of the specific data utilized in your determination.

2. Information as to whether the population in Uvalde County has undergone significant increase since the 1970 census or remained relatively stable, and the racial or ethnic character of such change, if any.

3. A map of Uvalde County delineating the boundary lines of election precincts before and after the adopted changes, indicating thereon the location of polling places, as well as areas where the Mexican-American population is concentrated.

4. A copy of the 1972 registered voter lists that were used in your determination, as well as a copy of your current registered voter list.

5. Information on election results for all elections to the Commissioner's Court, County School Board, or other County elective office held since 1970 and indicate any Mexican-Americans that have held elective office in any county post.

As you know the Attorney General has 60 days in which to consider the submission pursuant to Section 5. This 60-day period will commence when this Department receives the information necessary to evaluate properly the changes proposed in your submission.

If you have any questions concerning the matters

discussed in this letter or if we can aid you in any way to obtain the additional information we have requested, please do not hesitate to call Mr. Bob Chavez (202/739-3778) of my staff, who has been assigned to handle this submission. Please refer to File X5572 in any written response to this letter so that your correspondence will be properly channelled.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

COUNTY OF UVALDE

[SEAL]

TEXAS

UVALDE, TEXAS

August 12, 1976

[Received Aug. 14, 1976]

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Pottinger;

This is in reply of your letter of July 30, 1976 in regard to the change in the Commissioners Court precinct lines of Uvalde County. I will below try to answer your questions.

In paragraph one you ask us to estimate the total population by race (White-Anglo, Mexican American, and Black) in Uvalde County as well as population totals by race for each of the Commissioner precincts before and after adoption of the changes.

The only way we would have to estimate these populations in Uvalde County as a whole or any Commissioners precinct at any given time would be by the voter registration records. There is no other way that this could be done. We do know that the

White-Anglo and the Mexican American population is about even in Uvalde County as a whole. As I have advised you before we have very, very few Blacks here in Uvalde. We also know that only a percentage of people registered to vote but a percentage of each race can be calculated from the ones that did register. We are enclosing herewith a complete copy of the voting list of 1972 and of 1976. You can by going over these list reach as close a figure as we can. I notice you say that the re-districting committee appointed by the Uvalde County Commissioners Court in their report indicated that 1970 census tabulations as well as a population density map for the City of Uvalde was available for their consideration. Then you state "Please advise us of the specific data utilized in your determination." I do not know exactly what you mean by this last sentence. If you mean at the time we re-districted we took this committee's report in full and re-districted according thereto. If you mean the determination that we are making at this time we tried to explain this in the first part of this paragraph.

In answer to your paragraph two I just happen to receive from the State Department of Highways and Public Transportation at Del Rio, Texas a master plan for public and mass transportation which has to do with District 22. In this plan they set out the City population of Uvalde and the County population of Uvalde and their growth during the years 1920, 1930, 1940, 1950, 1960 and 1970. From this

chart you can see that Uvalde County and the City of Uvalde has grown steadily but with no great increase in any one year. You will notice that in the year 1960 to 1970 a very reasonable growth was experienced. In answer to your paragraph three we are enclosing herewith a map of Uvalde County and also another of the City of Uvalde showing the election precincts before and after the adoption changes and we indicated thereon the location of the polling places as well as the Mexican-American population. In answer to your paragraph 5 we are enclosing herewith all election results to the County Commissioners Court and other County Elective Offices held since 1970. As I advised you before no Mexican-American to my knowledge has ever held an elective position and none have ever held the Commissioners Court Office until we re-districted when one Mexican-American was elected. If any significant Mexican-American population is encroaching into any other precinct other than Commissioners Precinct #2 it would be into Commissioners Precinct #4 just to the north of Precinct #2. A Mexican-American did run in the last election in that precinct together with three Anglo's. He ran last and an Anglo was elected. However, he did receive a substantial vote in that election. I also know that he was not especially liked among the Mexican-American people and I feel that a person of their race who was well liked by them could possibly win an election in this precinct also. I would call your attention to the copy of the results of the

primary election for County Offices in 1970. We have placed a red X at the County Judge's race. A Mexican-American, George Garza, ran against me in that election. George is one of the finest Mexican-American boys we have, a school teacher, and my very close personal friend. He was before the election my friend and still is. In deference to him I did not ask a single Mexican-American person to vote for me. I did not spend any money on the election as far as campaigning was concerned. You will notice that he only carried two boxes, Box 16 and Box 15. You will notice that he did not even carry these boxes by a large majority and I did recieve a number of votes. Practically all of these two boxes were Mexican-Americans with probably 35 to 50 Anglos. Practically all of this area at this time is now contained in Commissioners Precinct #2 which elected a Mexican-American Commissioner.

We do not have the results of school elections and cannot furnish these results as we have numerous independent school districts here in the County that hold their own elections. We did have at the time of the re-districting a complete United States Census for 1970. In some way this report has been mislaid or lost and we do not have it at this time. You, being in Washington, can obtain this without any great amount of trouble and if there is any cost attached we will be glad to pay whatever is necessary.

As I have stated before we re-districted for the main purpose of aiding the Mexican-American people here in this County. There is no other way that it

could be done that would aid them more. Any change which is made at this time would simply dilute their voting strength.

Yours truly,

/s/ Leo Darley
LEO DARLEY
Uvalde County Judge

LD/mbt
Encs.

October 13, 1976

Honorable Leo Darley
County Judge
County Courthouse
Uvalde, Texas 78801

Dear Judge Darley:

This is in reference to the reapportionment of Commissioner's Court Precincts in Uvalde County, Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 14, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. Our review and analysis shows that, according to the 1970 Census, Uvalde County is 50.7% Mexican-Americans, 47.5% Anglo and 1.8% Black. Information available to us indicates that Commissioner Precinct 2 under the redistricting plan has an overwhelming concentration of Mexican-Americans, and in addition exceeds the norm of an ideal (population) district by a percentage of at least 11%. The other precincts, two of which are substantially underrepresented, apparently have deviations of similar scope resulting in a total deviation range in excess of 20%. Thus, it would appear that the precinct with the highest percentage of Mexican-Americans is the most underrepresented while at least two of the remaining precincts, each with evident Anglo population majorities, show deviations indicating overrepresentation.

We note that the reapportionment is based on registered voter statistics. Our experience indicates that Mexican-Americans generally have a lower rate of voter registration than do Anglos. Thus an apportionment based on registration data is likely to have a dilutive effect on the vote of Mexican-Americans. See *Ely* v. *Klahr*, 403 U.S. 108, 113-15 (1971) (Douglas, J., concurring). Our analysis further shows that there is evidence that Mexican-Americans have not been afforded access to the political process in Uvalde County. When these considerations are noted, together with the configuration of the plan, particularly with the elongated hour-glass shape of precinct 1 which is developed with the Mexican-American population in the minority, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose or effect of abridging the right to vote of the Mexican-Americans citizens of Uvalde County.

Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, e.g., *White* v. *Regester*, 412 U.S. 755 (1975); *Robinson* v. *Commissioner's Court, Anderson County*, 505 F. 2d 674 (1974), I must, on behalf of the Attorney General, interpose an objection to the 1973 redistricting of Uvalde County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the redistricting plan does not have the purpose

and will not have the effect of denying or abridging the right to vote to members of a language minority group in the County. However, until and unless such a judgment is obtained, the 1973 Uvalde redistricting plan is legally unenforceable.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 276658 179

Supreme Court, U. S.
FILED
DEC 4 1978
MICHAEL RODAK, JR., CLERK

NO. 78-731

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA,
Appellant

v.

UVALDE COUNTY, TEXAS, ET AL,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-731

UNITED STATES OF AMERICA,
Appellant

v.

UVALDE COUNTY, TEXAS, ET AL,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO DISMISS OR AFFIRM

Pursuant to Paragraphs 1(b) and (c) of Rule 16 of the rules of this Court, Appellees Uvalde County, et al, move that the appeal be dismissed or, alternatively, that the Judgment of the District Court be summarily affirmed.

OPINION BELOW

The opinion of the District Court has been published. *Garcia, et al v. Uvalde County, et al,* 455 F.Supp. 101 (W.D. Tex., 1978).

QUESTION PRESENTED

In its Jurisdictional Statement (p. 2) Appellant presents the question to be decided on this appeal in the following manner:

> "Whether, under Section 5 of the Voting Rights Act and implementing regulations, the Attorney General's objection to a County redistricting plan was untimely because it was entered more than sixty (60) days after receipt of the County's initial inadequate response to the Attorney General's first request for additional information."

Appellees suggest that this manner of phrasing the question presented is inaccurate because the majority of the three judge District Court found that the County's initial response to the Attorney General's first request for additional information was not inadequate. This finding will be discussed below; therefore, with their exception noted, Appellees adopt the question presented by Appellants.

STATEMENT

The relevant facts are set out in the Memorandum Opinion and Order of the District Court which is an appendix to the Jurisdictional Statement of Appellant (Jurisdictional Statement, pp. 3a-8a). Therefore, rather than burden the Court with repetition, Appellees, as they did in their Motion to Dismiss or Affirm in No. 78-580,[1] will summarize the facts, in outline form, as follows:

---

1. A separate appeal by private Plaintiffs.

1. Initial submission	March 22, 1976
2. Attorney General requests additional information items A, B and C (first request) (Jurisdictional Statement, pp. 39a-40a)	May 19, 1976
3. Uvalde County responds with A and B and states "we don't have any way" of providing C (first response) (Jurisdictional Statement, pp. 41a-43a)	May 28, 1976
4. Attorney General requests additional information items D, E, F, and G and again, C (second request) (Jurisdictional Statement, pp. 44a-46a)	July 30, 1976
5. Uvalde County responds with available information requested but reiterates the unavailability of item C (second response) (Jurisdictional Statement, pp. 47a-51a)	August 12, 1976
6. Attorney General interposes objection (Jurisdictional Statement, pp. 52a-54a)	October 13, 1976

Slightly more than two weeks prior to the November 1, 1976 general election and approximately 205 days after the submission process began, the Attorney General's office objected to an apportionment scheme adopted and in effect since 1973. Under the 1973 reapportionment, a Mexican-American was elected County Commissioner in Uvalde County; prior to that time, at least in recent years, no Mexican-American had ever been elected to that position.

The District Court held that upon receipt by the Attorney General of Uvalde County's May 28, 1976 response to the Attorney General's first additional information request the submission was complete. The Attorney General was not authorized to postpone the start of the sixty day period of assessment of the Appellees' submission by requesting more (different) information or by repeating a prior request for information which the submitting authority had already stated was unavailable (Memorandum Opinion and Order, Jurisdictional Statement, p. 12a). Therefore, the Court held, Appellees' submission was complete as of June 1, 1976, the date on which Appellees' May 28, 1976 response to the Attorney General's first request for additional information was received. Since the Attorney General did not interpose an objection within sixty days after June 1, 1976, the District Court held that Uvalde County had complied with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and was free to continue in effect the 1973 reapportionment.

ARGUMENT

At the trial of this cause, as noted in the opinion of the District Court (Jurisdictional Statement, pp. 8a, 10a) the United States argued that the Attorney General could make as many requests for additional information, each time postponing the start of the sixty day period for assessing a submitting voting change, as he deemed desirable. Now, Appellant perceives the decision of the District Court as establishing "an arbitrary rule to the effect that the Attorney General is limited to a single request for further information and must act on the basis of that response, whether adequate or not." (Juris-

dictional Statement, pp. 14-15). The District Court established no such rule.

Here, the District Court was presented with a case in which Uvalde County, in response to the Attorney General's first request for additional information, provided him with the information requested except for information which the County, in clear and unequivocal language, stated was not available. After considering the evidence presented by the Defendants-Appellees,[2] the District Court made the following findings:

> "Thus, as of June 1, 1976, the date on which the County Judge's May 28, 1976 letter with enclosures responding to the Attorney General's first request for additional information letter was received, Uvalde County had (1) made the initial submission of the 1973 reapportionment and (2) supplied the Attorney General with all of the information he had requested that was available to the County." (Memorandum Opinion and Order, Jurisdictional Statement, p. 7a).

Based on this finding, the District Court concluded as follows:

> "Once the submitting authority complies with the Attorney General's request for additional information the sixty day period commences. The Attorney General may not further postpone the commencement of that period by requesting still more information or by repeating his request for information which the submitting authority has already stated to be unavailable.

2. The United States chose not to present any evidence.

> "Applying this principle to the case before us we find that the sixty day period commenced on the date that the Attorney General's office received Uvalde County's response to the first request for additional information letter, June 1, 1976. By that date, the Attorney General had been supplied the information he requested in his May 19, 1976 letter except for the population (as opposed to registered voters) information which the County Judge stated was not available. The submission was, therefore, according to the regulations, complete." (Memorandum Opinion and Order, Jurisdictional Statement, pp. 12a-13a).

Thus, Appellant's reading of the decision below is erroneous.

Furthermore, Appellant attempts to bolster its argument by seeking to have this Court decide *de novo* the *facts,* notwithstanding Rule 52(a) of the Federal Rules of Civil Procedure and this Court's admonition in *United States v. National Ass'n of Real Estate Bds.*, 339 U.S. 485, 495-496, 70 S.Ct. 711, 717 (1950):

> "It is not enough that we might give the facts another construction, resolve the ambiguities differently and find a more sinister cast to actions which the District Court deemed innocent. [citations omitted]. We are not given those choices, because our mandate is not to set aside findings of fact 'unless clearly erroneous.' "

Because of Appellant's somewhat misleading characterization of the facts, Appellees will again discuss the evidence before the District Court.

As set out in the summary of the relevant facts, above, Uvalde County made its initial submission on March

22, 1976. Along with a letter of that date (Jurisdictional Statement, pp. 29a-35a) Uvalde County enclosed various documents, correspondence and newspaper clippings. On May 19, 1976 the Attorney General's office requested additional information (Jurisdictional Statement, pp. 39a-40a).

In this first request letter of May 19, the Attorney General's office asked for the following information:

(1) Population and number of registered voters by race for each precinct both before and after the 1973 reapportionment;

(2) Map of the County showing the outlines of the precincts before and after the change;

(3) Indications on that map, or on a separate map, of the areas in which Mexican-Americans primarily reside.

The County's response to this request (Jurisdictional Statement, pp. 41a-43a) is best summarized by the District Court, as follows:

> "On May 28, 1976, the County Judge responded to the Attorney General's first request for additional information letter referred to above. In this letter, the County Judge responded to each of the requests made by the Attorney General in his additional information letter. First, the County Judge attached to the letter a chart showing the number of registered voters by race and ethnicity for each precinct before and after the reapportionment. Second, he included maps of the City and of the County of Uvalde showing the precinct boundaries and he described in his letter the areas in which the Mexican-American population tended to con-

> centrate. However, with respect to the Attorney General's request for exact population figures or estimates of total population, as opposed to the number of registered voters, in each precinct, the County Judge made the following statement:
>
> > 'We do not have any way of telling the total population of these districts before and after this change was made.'
>
> Such a statement on behalf of the submitting authority was not only appropriate but required by the regulations of the Attorney General. 28 C.F.R. § 51.10(b)(8)." (Memorandum Opinion and Order, Jurisdictional Statement, pp. 6a-7a).

Appellant apparently argues, contrary to the findings and holding of the District Court, that this response "ignores the request or withholds the data sought" and, therefore, was "not effective" to start the sixty day period (Jurisdictional Statement, p. 16).

First, Appellant argues that the statement in the letter indicating the location of Mexican-American residential concentrations was inadequate and that the Attorney General, to "avoid acrimony" was forced to ask for the information a second time in his second request for additional information (letter of July 30, 1976, Jurisdictional Statement, pp. 44a-46a). That is incorrect. The District Court expressly found this response adequate. Furthermore, there is nothing in the July 30, 1976 letter (second request) indicating that the map and description of residential concentrations of Mexican-Americans in the May 28, 1976 letter was insufficient or inadequate or in any way failed to provide the Attorney General with the information he had requested.

In fact, the letter of July 30 requests a *different* map, i.e., one indicating on a map showing boundary lines and residential concentrations "the location of polling places" (Jurisdictional Statement, p. 45a). That had not been requested before.

Second, Appellant argues that the County had, in prior correspondence, referred to "census reports" used in the reapportionment process.[3] Therefore, Appellant argues, it was "difficult to accept" the County's response that the population figures requested were not available and, therefore, the Attorney General "merely exhibited patience" by sending a second request for additional information letter again asking for the population by race or ethnicity for each precinct (Jurisdictional Statement, p. 17). That argument is contrary to the regulations, discussed below, and the holding, implicit in the opinion of the District Court, that the inquiry of the Attorney General comes to an end when the submitting authority states that information is not available. Furthermore, the record shows that the Attorney General was not acting in "good faith", trying to "avoid acrimony" but, was merely delaying the submission process.

Robert Chavez, the second research analyst in the Attorney General's office assigned to Uvalde County's submission, testified that the Attorney General's office maintains a file of all United States census information. He further testified as follows:

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3. The "census reports" had previously been characterized, in a 1974 letter from Uvalde County to a Mr. Gomez that was included in the original submission, as being "almost useless".

> "The Mexican-American population, or Spanish-speaking population, is not available, except for SMSA's, and Uvalde County not being a SMSA, it is not available. . . . That's the first thing we look at when we receive a submission, and the books are in our office." (Deposition Transcript, p. 37).

He later again admitted that it's impossible to determine the population by ethnicity in each precinct from official sources (Deposition transcript at 72) and that it's "not available anywhere." (Deposition transcript at 70). Thus, Appellant can hardly argue that it was acting in good faith when it was requesting information that the submitting authority had stated was not available and that the Attorney General's office knew was not available. Additionally, the reference in prior correspondence to "census reports" or other population figures in no way conflicts with the statement of Uvalde County in its response to the first additional information request that the County had no way to determine population *by race or ethnicity for each precinct.* It is obvious from the evidence presented to the District Court that the Attorney General was not acting in good faith and was merely, for reasons of his own, delaying what is supposed to be an expeditious submission process.

The District Court applied the unambiguous regulations promulgated by the Attorney General under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, to the evidence before it. Therefore, the appeal raises no substantial Federal question justifying further argument.

The Attorney General has sixty days in which to interpose an objection to a submitted change affecting voting. 42 U.S.C. § 1973c; 28 C.F.R. § 51.3(a). The sixty day

period commences upon the receipt of information meeting the requirements of § 51.10(a) of the regulations. 28 C.F.R. § 51.3(b).

Section 51.10(a) states that each submission shall contain certain information described in § 51.10(a)(1)-(5)[4] plus "other information which the Attorney General determines is required to enable him" to make his determination. § 51.10(a)(6). Subpart (6) also states that when such other information is required, the Attorney General shall notify the submitting authority in the manner provided in § 51.18(a).

Section 51.18(a) of the regulations requires the Attorney General to request "such further information as is necessary" and provides that the sixty day period will commence upon the receipt of "such information". Importantly, that subsection of the regulations also states that *"[t]he request"* shall be made promptly after the Attorney General receives the original submission (emphasis added). Thus, the regulations clearly contemplate a single request postponing the sixty day period.[5] Here, the first request was made on May 19, 1976. This first request was certainly not prompt, coming close to the 60th day after the initial submission.

Section 51.18(a) of the regulations, providing for the start of the sixty day period upon the receipt of the

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4. Appellants do not argue that these requirements were not met.

5. The dissenting judge in the District Court believed that the Attorney General could make more than one request for additional information but, within sixty days of an inadequate initial submission. When the requested information was received the formal sixty day period began. His disagreement with the majority, apparently, was on the *facts*, i.e., whether the County's first response was adequate. (Jurisdictional Statement, p. 15a).

§ 51.10(a) information, must be read in connection with § 51.10(b)(8). There, it is provided that when information requested is unavailable, the submission should so state. These regulations, read together, clearly indicate that the Attorney General has no authority to indefinitely suspend the sixty day period when requested information is stated to be unavailable. If such authority were given, Congress' sixty day requirement in Section 5 of the Voting Rights Act would be meaningless.

The District Court applied these regulations to the circumstances present here. In the manner required by the regulations, Uvalde County complied with the first request for additional information on May 28, 1976 by providing the Attorney General with the information he had requested except that which the County stated was unavailable. Therefore, pursuant to the regulations, the submission was complete on June 1, 1976, the date the Attorney General received the County's first response, more than sixty days prior to the October 13, 1976 objection of the Attorney General.

Appellees do not deny the Attorney General the right to request additional information a second time. In fact, the regulations expressly provide for the situation in which a second request is desirable to avoid acrimony between the Attorney General and the submitting authority. See *Georgia v. United States,* 411 U.S. 526, 540-541, 93 S.Ct. 1702, 1710-1711 (1973). However, the second request for additional information must be made "*during* the sixty day period", not postponing it. 28 C.F.R. § 51.18(b)(1) (emphasis added).[6] Thus, the District

6. Appellant states that the Attorney General requested additional information more than once in 45 of the 5,450 submissions received

Court properly held that the Attorney General's second request on July 30, 1976, did not effectively postpone the start of the sixty day period.

The decision of the District Court is not in conflict with the Court's decision in *Georgia v. United States, supra.* There, § 51.18(a) of the regulations allowing the Attorney General to postpone the start of the sixty day period by requesting additional information was held to be reasonable and valid. The request for additional information procedure was not used in that case to postpone the start of the sixty day period a second time after the submitting authority had complied with a prior request for additional information. Other facts distinguishing the *Georgia* case from this one are dealt with in the Memorandum Opinion and Order of the District Court, (Jurisditional Statement, pp. 11a-12a).

CONCLUSION

For these reasons, Appellees submit that this appeal does not bring a substantial Federal question before the Court. Therefore, Appellees move the Court to

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between January 1, 1976 and March 31, 1978 (Jurisdictional Statement, p. 19). These "statistics" were not offered into evidence in the District Court. Nevertheless, there is no indication that in any of the 45 instances the second request was used to again postpone the start of the sixty day period. Thus, the administrative practice is not in conflict with 28 C.F.R. § 51.18(b)(1) and the decision of the District Court which allow second requests during the sixty day period. Furthermore, the "statistics" do not show that in these 45 second requests the Attorney General sought information that had not been requested before or information that had already been stated to be unavailable as was the case here.

summarily dismiss the appeal or affirm the Judgment of the District Court.

Respectfully submitted,

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Intervenors-Appellees, Norment Foley and Gene Ilse, adopt the foregoing Motion in full.

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CERTIFICATE OF SERVICE

I, Jeffrey A. Davis, a member of the Bar of the Supreme Court of the United States, hereby certify that on December 1, 1978, pursuant to Rule 33 of the Supreme Court Rules, I served three copies of the foregoing Motion to Dismiss or Affirm on each of the interested parties by placing such copies in the United States mail, first class postage prepaid, addressed to the following persons:

Paul D. Rich, Winter Garden Project, Texas Rural Legal Aid, Inc., P. O. Drawer 707, Crystal City, Texas 78839, Attorney for Plaintiffs Richard Garcia, et al; Lloyd Lochridge, McGinnis, Lochridge & Kilgore, 5th Floor, Texas State Bank Building, Austin, Texas 78701, Attorney for Intervenors-Appellees; Rogelio Munoz, 231 S. Getty Street, P. O. Box 1434, Uvalde, Texas 78801, Attorney for Gilbert Torres; and the Solicitor General, Department of Justice, Washington, D.C. 20530, for the United States.

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